

COOPER CARRY, INC.)
)
v.) NO. 3:05-0297
) JUDGE CAMPBELL
OPRY MILLS, L.L.C.)

DISCUSSION

The U.S. Supreme Court has held that the arbitrator should decide allegations of waiver, delay or a like defense to arbitrability. Howsam v. Dean Witter Reynolds, Inc., 123 S.Ct. 588, 592 (2002) (citing Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983)). In Howsam, the Court found that the applicability of a six-year limitations period was a matter for the arbitrator, not for the judge. Id.

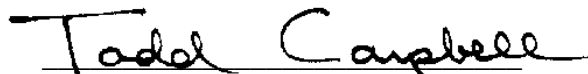
Citing the Revised Uniform Arbitration Act of 2000, the Court noted that in the absence of an agreement to the contrary, issues of substantive arbitrability are for a court to decide and issues of procedural arbitrability, like whether prerequisites such as time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate have been met, are for the arbitrator to decide. Id.; see also Marie v. Allied Home Mortgage Corp., 402 F.3d 1, 9-11 (1st Cir. 2005) and International Ass'n. of Bridge, Structural and Ornamental Iron Workers v. J & N Steel and Erection Co., Inc., 2001 WL 392048 at ** 4-5 (6th Cir. April 13, 2001).

The Court finds that the issues of time limitations and waiver presented by Plaintiff's Complaint herein are issues, in the first instance, for the arbitrator, not the Court.

CONCLUSION

For these reasons, Defendant's Motion to Dismiss is GRANTED, and this action is DISMISSED. Plaintiff's Motion for Preliminary Injunction is DENIED as moot.

IT IS SO ORDERED.


TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

